

SUPERIOR COURT IN THE STATE OF CALIFORNIA
COUNTY OF YOLO

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

Case CR-F -08-0003355

vs.

MINUTE ORDER

MARCO ANTONIO TOPETE
Defendant.

Judge: PAUL K. RICHARDSON
Clerk: JENNIFER HICKS
Reporter: JEANETTE BAKER
Date: MAY 21, 2010

HEARING: MOTION TO CONTINUE TRIAL
MOTION FOR CHANGE OF VENUE

Counsel for the People: JEFF REISIG, DISTRICT ATTORNEY
GARRETT HAMILTON, DEPUTY DISTRICT ATTORNEY

Counsel for Defendant(s): HAYES GABLE, III
THOMAS PURTELL

8:36 AM

Defendant and counsel present in open court and ready to proceed.

The Court addressed defense counsel's motion to continue the jury trial currently set to begin (with motions in limine) on June 14, 2010.

Defense counsel, Hayes Gable stated that his expert, Mr. Haney is present and would be available to answer questions in an in camera hearing.

In answer to the Court's question regarding the expected length of the motion to change venue, both sides agreed the motion should take less than (1) one hour.

Counsel for the People, Garrett Hamilton stated his opposition to the expert testifying in camera and asked for his testimony to be heard in open court.

Defense counsel, Mr. Gable argued his reasons for an in camera hearing.

The Court ordered the declaration, previously provided by Dr. Haney, sealed.

The Court stated that counsel for the People would be allowed to question Dr. Haney as to issues pertaining to time frames.

Defense counsel, Mr. Gable noted his objection.

The Court further stated that questions pertaining to Dr. Haney's work product would be conducted in camera.

Defense counsel, Hayes Gable declined to have their expert cross-examined by the prosecution in open court. Mr. Gable further stated that if the Court is not willing to allow the expert to testify in camera, defense counsel would withdraw their witness at this time.

The Court indicated that the previously outlined procedure would be followed.

Defense counsel, Mr. Gable withdrew his witness.

Counsel for the People, Mr. Hamilton stated that the Court ordered the witness's presence today therefore, defense counsel cannot withdraw him.

The Court directed defense counsel to make their witness available.

Defense counsel, Mr. Gable presented his expert.

DR. CRAIG HANEY was sworn and testified.

Counsel for the People, Mr. Hamilton examined the witness.

Upon request from the Court, Mr. Hamilton listed the questions he would like the Court to ask the witness in camera.

Counsel for the defendant, Thomas Purtell stated that they have received discovery from the People from the California Department of Corrections including numerous discs containing jail visits.

Defense counsel, Mr. Gable stated that they would need time to sort through all the newly obtained material.

Counsel for the People, Mr. Hamilton continued with his examination of expert Dr. Haney.

At the conclusion of the People's examination, Mr. Hamilton and Mr. Reisig posed further questions to the Court to be asked during the in camera hearing.

The defendant waived his presence for the in camera hearing.

9:22 AM

Defense counsel, Clerk, Court Reporter and the witness proceeded to chambers for the in camera hearing.

Defense Exhibits A-ID through C-ID were pre-marked.

10:57 AM

Defendant and counsel again present in open court and ready to proceed.

The Court ordered the record of the in camera proceedings sealed.

The Court allowed both sides time to make final arguments regarding the motion to continue the jury trial.

Counsel for the People, Mr. Hamilton requested the court continue the matter for (1) one week for ruling to allow counsel to prepare.

Counsel for the defendant, Mr. Gable made his final comments regarding the motion.

The Court declined the People's request to allow (1) one week for ruling.

The Court granted defense counsel's motion to continue the trial, in part. The Court stated that it was apparent that Dr. Haney would need additional time to prepare for trial, however the Court would not continue the trial for the (6) six months requested.

The Court set the following court dates: Motions in Limine will begin on SEPTEMBER 13, 2010 at 8:30 AM in DEPARTMENT 6 and Jury Selection will begin on SEPTEMBER 20, 2010 at 8:30 AM in DEPARTMENT 6.

The Court stated that this would be the last continuance granted barring some extraordinary circumstances. The Court further stated that the additional discovery recently received by defense counsel was taken into account when making the ruling.

Counsel for the People, Mr. Hamilton stated that the discovery was given to defense in order to help move the trial along, not to give the defense cause for a continuance.

Mr. Hamilton further inquired if the Court was taking into account defense counsel's federal court case, also set in September, when setting the trial dates.

The Court's view was that the Topete case had been set for several trial dates before the federal court trial had been set and the Court wanted to keep its priority and hoped the federal court would understand.

Counsel for the People, Mr. Hamilton asked if the Court would be asking defense counsel for an order to show cause.

The Court stated that would not be asked for.

Defense counsel, Mr. Gable stated that he does have a trial set to begin on September 21, 2010 and will advise the other court of this trial.

The Court stated that (4) four motions were filed by defense counsel this week. The Court set the following briefing schedule in regards to those motions: People's response to be filed by June 11, 2010, further response by defense counsel to be filed by July 2, 2010.

The Court set a hearing for those (4) four motions on JULY 30, 2010 at 8:30 AM in DEPARTMENT 6.

The Court addressed the jury questionnaire and asked counsel to provide witness lists to be included in the questionnaire.

Counsel for the People, Jeff Reisig raised their concern that the People still have not received a single piece of discovery in this case.

The Court addressed defense counsel's motion for change of venue.

Counsel for the defendant, Mr. Purtell provided defense exhibits to the Court.

8 ½ x 11 photo of framed picture of Deputy Diaz previously marked, DEFENDANT'S EXHIBIT A-ID, now identified.

8 ½ x 11 photo of memorial plaques with flowers displayed previously marked, DEFENDANT'S EXHIBIT B-ID, now identified.

8 ½ x 11 photo of close-up of memorial plaque for Deputy Diaz previously marked, DEFENDANT'S EXHIBIT C-ID, now identified.

DEFENDANT'S EXHIBITS A-ID through C-ID were admitted into evidence and ID markings stricken.

Defense counsel, Mr. Purtell presented his argument for the motion for change of venue.

Counsel for the People, Mr. Reisig presented his argument against the motion.

The Court denied defense counsel's motion for change of venue.

The Court would allow defense counsel to renew their motion, should it become apparent in jury voir dire that a substantial bias exists.

The Court set the following briefing schedule for the filing of any further motions in limine: any further motions in limine are to be filed by August 6, 2010. Responses are to be filed by August 20, 2010 and any replies are to be filed by September 1, 2010.

DEFENDANT'S EXHIBITS A-C are to be kept with the court file.

The matter was continued for hearing on motions on JULY 30, 2010 at 8:30 AM in DEPARTMENT 6.

The defendant remained in the custody of the Sheriff's Department with bail set at NO BAIL.

11:34 AM

Court adjourned.

frmlmins.s (FMO)